

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
DEPARTMENT OF PUBLIC PROTECTION
OFFICE OF INSURANCE
DIVISION OF HEALTH INSURANCE POLICY AND MANAGED CARE
(Amendment)

806 KAR 17:290. Independent External Review Program.

RELATES TO: KRS 304.17A-621 through 304.17A-631

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-629

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-629 requires the department to promulgate administrative regulations regarding the Independent External Review Program. This administrative regulation establishes insurer requirements, procedures for the certification of independent review entities, and the process for initiating and conducting external review of utilization review decisions. It also establishes disclosure requirements of the external review process to be included in the health benefit plan issued at enrollment of a covered person. Executive Order-064, filed December 23, 2003, created the Environmental and Public Protection Cabinet. Executive Order 2004-031, filed January 6, 2004, abolished the Department of Insurance and transferred all its “duties, functions, responsibilities, records, equipment, staff and support budgets” to the Office of Insurance.

1 Section 1. Definitions.

2 (1) "Adverse determination" is defined in KRS 304.17A-600.

3 (2) "Assign" or "assignment" means selection of an independent review entity by an
4 insurer, and acceptance of a request to conduct an external review by an independent review
5 entity.

6 (3) "Coverage denial" is defined in KRS 304.17A-617(1).

7 (4) "Covered person" is defined in KRS 304.17A-600(4).

8 (5) "Department" means the Department of Insurance.

9 (6) "Electronic" or "electronically" is defined in KRS 304.17A-700(7).

10 (7) "External review" is defined by KRS 304.17A-600(5).

11 (8) "Independent review entity" is defined in KRS 304.17A-600(7).

12 (9) "Insurer" is defined in KRS 304.17A-600(8).

13 (10) "Reviewer" means an individual selected by the independent review entity to
14 conduct an external review and make a recommended decision to the independent review entity.

15 Section 2. Requirements of an Insurer.

16 (1) An insurer shall:

17 (a) Disclose to a covered person in a consumer friendly written format the
18 following information concerning an external review:

19 1. At the time of enrollment, the right to an external review in
20 accordance with KRS 304.17A-505(1)(g);

21 2. The availability of an external review, including expedited external
22 review, in the insurer's notice of an adverse determination [~~or notice of coverage denial~~] in
23 accordance with KRS 304.17A-623(1);

3. Instructions for initiating an external review in the internal appeal decision letter upholding an adverse determination, including:

- a. Whether the appeal must be in writing;
- b. How to complete any forms, including a medical records release form or a written authorization of representation;
- c. Applicable time frames;
- d. The position and phone number of a contact person who can provide additional information about an external review; and
- e. Any other required documentation; and

4. The right of a covered person to request an external review within sixty (60) days of receiving notice from an insurer that, pursuant to KRS 304.17A-617(3), has elected not to provide coverage and to afford an opportunity for external review;

(b) Allow a covered person, authorized person, or provider acting on behalf of and with the consent of a covered person, to submit an oral request, followed up by an abbreviated written request, for an expedited external review;

(c) Provide the following information relating to an external review in the policy or certificate of coverage issued to a covered person and upon request:

1. The circumstances whereby the following types of external review shall be provided:

a. Nonexpedited external review in accordance with KRS 304.17A-623(3), (4) and (6); and

b. Expedited external review in accordance with KRS 304.17A-623(10), (11) and (12);

1 2. The filing fee for requesting an external review in accordance with
2 KRS 304.17A-623(5);

3 3. That the cost for an external review by an independent review
4 entity shall be paid by the insurer in accordance with KRS 304.17A-625(5);

5 4. The procedure for submitting:

6 a. An oral request followed up by an abbreviated written
7 request, or a written request for an expedited external review;

8 b. A written request for a nonexpedited external review; and

9 c. The completion of any specific forms, including a medical
10 records release consent form;

11 5. The time frame for:

12 a. Submitting a request for external review in accordance with
13 KRS 304.17A-623(4);

14 b. Rendering a decision by an independent review entity in
15 accordance with KRS 304.17A-623(12) and (13); and

16 c. Compliance of an insurer with a decision of the
17 independent review entity in accordance with KRS 304.17A-625(11) through (13);

18 6. The telephone number and position of a contact person of the
19 insurer who may provide information relating to an external review;

20 7. A statement relating to the confidential treatment of medical
21 records and information relating to the external review; and

22 8. A statement of the availability and a description of a complaint
23 process through the department relating to:

1 a. A covered person's right to an external review in
2 accordance with KRS 304.17A-623(8); and

3 b. The action of an independent review entity in accordance
4 with KRS 304.17A-625(16);

5 (d) If an external review is requested by an authorized person or provider
6 acting on behalf of a covered person, obtain the:

- 7 1. Written authorization of representation; and
8 2. Consent to release medical records to the independent review
9 entity;

10 (e) Make a determination whether an external review is warranted in
11 accordance with KRS 304.17A-623(3) and (10), and notify the requester of that determination
12 within the following time periods:

- 13 1. For expedited reviews, within sufficient time to comply with KRS
14 304.17A-623(11); or
15 2. For nonexpedited reviews, within five (5) business days of receipt
16 of the request;

17 (f) Upon a determination that an expedited external review is warranted,
18 promptly:

- 19 1. Request assignment of the external review to an independent
20 review entity selected on a consecutive rotation basis from a list of certified independent review
21 entities provided by the department; and

2. Notify the independent review entity by telephone that the insurer shall forward the following documents to the independent review entity within twenty-four (24) hours of receipt of the request in accordance with KRS 304.17A-623(11):

a. Consent of the covered person authorizing release of all necessary medical records as required by KRS 304.17A-623(4);

b. Information to be taken into account as required by KRS 304.17A-625(1)(a); and

c. A completed External Review Information Face Sheet, HIPMC-IRE-6 (07/04) [~~(07/02)~~];

(g) Upon a determination that a nonexpedited external review is warranted:

1. Request assignment of the external review by telephone to an independent review entity selected on a consecutive rotation basis from a list of certified independent review entities provided by the department; and

2. Within three (3) business days of assignment deliver to the independent review entity:

a. Consent of the covered person authorizing release of all necessary medical records as required by KRS 304.17A-623(4);

b. Information to be taken into account as required by KRS 304.17A-625(1)(a); and

c. A completed External Review Information Face Sheet, HIPMC-IRE-6 (07/04) [~~(07/02)~~];

(h) Upon assignment of an independent review entity, complete and send to the department an Assignment of Independent Review Entity Form, HIPMC-IRE-2 (07/04) [~~(07/02)~~]:

1. Within one (1) business day for an expedited external review; or
2. Within three (3) business days for a nonexpedited external review;

(i) Upon receipt of new clinical information submitted pursuant to KRS 304.17A-623(6)(b):

1. Immediately send a copy of the new clinical information as applicable to the:

- a. Covered person or authorized person;
- b. Provider; and
- c. Independent review entity;

2. Consider reversal of the internal appeal decision based upon the new clinical information; and

3. If the internal appeal decision is reversed:

a. Provide written notice of the reversal as applicable to the:

- (i) Covered person or authorized person;
- (ii) Provider; ~~and~~
- (iii) Independent review entity; and
- (iv) Department; and

b. Pay the fee in accordance with Section 3(18)(b) of this administrative regulation;

1 (j) Upon receipt of a decision relating to external review from an independent
2 review entity, implement the decision in accordance with KRS 304.17A-625(11) through (13);

3 (k) Upon receipt of an itemized statement of services rendered and costs, pay
4 the independent review entity within thirty (30) days;

5 (l) Maintain a written record of each external review; and

6 (m) Provide a copy of the covered person's health insurance policy to the
7 independent review entity.

8 (2) If a request for external review is denied by an insurer:

9 (a) Written notification shall be provided by the insurer to the person
10 requesting the external review and shall include:

11 1. The date the request for external review was received by the
12 insurer;

13 2. A statement relating to the nature of the request;

14 3. The rationale of the insurer denying the request;

15 4. A statement relating to the availability of review by the department
16 if a dispute arises regarding the right to external review;

17 5. The toll-free telephone number of the department; and

18 6. The name and telephone number of a contact person who shall
19 provide information relating to the denial of the request.

20 (b) Upon request by the department, the insurer shall provide:

21 1. A copy of the written notification described in paragraph (a) of this
22 subsection; and

23 2. Additional information deemed necessary by the department.

1 Section 3. Requirements of an Independent Review Entity. An independent review
2 entity shall:

3 (1) Accept a request for assignment unless:

4 (a) A conflict of interest exists;

5 (b) Confidentiality issues exist; or

6 (c) Due to circumstances beyond the control of the independent review entity,
7 an appropriate reviewer becomes unavailable.

8 (2) Upon receipt of a request for assignment from an insurer:

9 (a) Determine whether a conflict of interest exists, confidentiality
10 requirements of an insurer can be met and an appropriate reviewer is available; and

11 1. Immediately provide verbal notification, followed by written
12 notification to an insurer and the department of the rejection of an assignment if:

13 a. A conflict of interest exists;

14 b. Confidentiality requirements of an insurer cannot be met;

15 or

16 c. Due to circumstances beyond the control of the
17 independent review entity, an appropriate reviewer becomes unavailable.

18 2. Within twenty-four (24) hours of receipt of the request for
19 assignment, provide written notification to an insurer of the acceptance of an assignment if:

20 a. No conflict of interest exists;

21 b. Confidentiality requirements of an insurer can be met; and

22 c. An appropriate reviewer is available; and

23 (b) Maintain a written record of:

1 1. Whether the external review relates to an adverse determination or
2 a coverage denial, which requires resolution of a medical issue;

3 2. The specific question or issue to be resolved by the external
4 review; and

5 3. Whether the external review is expedited or nonexpedited;

6 (3) For each external review, obtain and maintain on file a signed statement of a
7 reviewer that he has no conflict of interest;

8 (4) Upon the receipt of new clinical information from a covered person, authorized
9 person, or provider acting on behalf of and with the consent of a covered person, immediately
10 send a copy of the new clinical information to the following, as applicable:

11 (a) Covered person or authorized person;

12 (b) Provider; and

13 (c) Insurer;

14 (5) Have a reviewer with expertise in:

15 (a) Health insurance benefits and contracts and who shall serve as a reviewer,
16 in addition to a health care professional reviewer, in an external review of a coverage denial
17 which requires the resolution of a medical issue in accordance with KRS 304.17A-617(3)(d); and

18 (b) Health care and who shall:

19 1. Conduct an external review of a coverage denial which requires
20 resolution of a medical issue and an adverse determination; and

21 2. Meet the following requirements:

22 a. Hold active licensure in a state of the United States;

1 b. Have recent experience or familiarity with current body of
2 knowledge and applicable specialty practice;

3 c. Have at least five (5) years of experience in the specialty of
4 the external review;

5 d. Hold current board certification by:

6 (i) The American Board of Medical Specialties if the
7 reviewer is a medical doctor;

8 (ii) The American Osteopathic Association if the
9 reviewer is a doctor of osteopathic medicine;

10 (iii) The American Board of Podiatric Surgery if the
11 reviewer is a doctor of podiatric medicine; or

12 (iv) Other recognized health professional board in
13 accordance with KRS 304.17A-627[(7)];

14 (6) Establish criteria in accordance with KRS 304.17A-627[(6), (7), and (9)] for:

15 (a) Selection of a qualified reviewer, including the initial verification and
16 reverification every two (2) years of credentials of the reviewer;

17 (b) Ensuring that an appropriate reviewer performs the external review;

18 (c) Ensuring that an appropriate number of reviewers are used for the external
19 review; and

20 (d) Ensuring that at least one (1) reviewer qualified in each medical specialty
21 is available for external review;

22 (7) Have a medical director or clinical director with professional postresidency
23 experience in direct patient care who shall:

- (a) Hold a current license to practice medicine in a state of the United States;
 - (b) Provide guidance for the medical aspects of the external review process;
 - (c) Oversee the medical aspects of the quality management program; and
 - (d) Oversee the medical aspects of the reviewer credentialing program;
- (8) Establish and implement criteria for determination of the need for a time extension of:
- (a) Twenty-four (24) hours to render a decision in an expedited external review in accordance with KRS 304.17A-623(12); and
 - (b) Fourteen (14) calendar days to render a decision in a nonexpedited external review in accordance with KRS 304.17A-623(13);
- (9) Provide written notification of a decision as required by KRS 304.17A-625(6), which shall include the:
- (a) Title, license number, state of licensure and specialty certifications, if any, of the reviewer;
 - (b) Date the decision was rendered; and
 - (c) A statement that the decision is final and binding on the insurer, and that any comments, questions, or complaints shall be submitted in writing to the department;
- (10) Provide written notification of the decision to:
- (a) The covered person or authorized person, treating provider, and insurer within two (2) business days of making the decision; and
 - (b) The department by:
 1. Copying the department on the written notification to the covered person; and

2. Completing an External Review Decision Notification Form, HIPMC-IRE-3 (07/04)~~[(10/02)]~~, within two (2) business days of rendering a decision;

(11) Establish written policies and procedures for maintenance and the confidential treatment of external review records in accordance with KRS 304.17A-623(9) and applicable state and federal law;

(12) Maintain a written record of an external review for a minimum of five (5) years in accordance with 806 KAR 2:070 which shall include as applicable:

(a) All documentation relating to the external review pursuant to KRS 304.17A-625(1);

(b) The independent review entity's decision regarding each issue identified in the external review;

(c) The name, credentials, and specialty of the reviewer;

(d) Medical evidence and information considered during the review;

(e) References to any medical literature or research data or national clinical criteria upon which the independent review entity's decision was based;

(f) A copy of relevant policy language of the insurer, including any relevant contractual definition of medical necessity;

(g) A copy of the adverse determination or coverage denial, which requires resolution of a medical issue and the internal appeal decision; and

(h) A copy of all correspondence and communication between the independent review entity, the reviewer and any other person regarding the external review, including a copy of the final decision letters;

(13) Provide toll-free telephone access that:

1 (a) Operates at a minimum from 9 a.m. until 5 p.m. of each business day in
2 each time zone where the services under review are in dispute; and

3 (b) Allows for:

- 4 1. Receiving after-hours requests for external review; and
5 2. Acting on expedited external review requests in accordance with
6 KRS 304.17A-623(12);

7 (14) If an external review function, or any portion of this function, is delegated or
8 subcontracted to another person or organization, submit:

9 (a) Policies and procedures relating to oversight activities to ensure
10 compliance with requirements of an independent review entity as established in KRS 304.17A-
11 623 and 304.17A-625, and this section; and

12 (b) A copy of the agreement whereby the external review function is
13 delegated or subcontracted;

14 (15) Establish and maintain a written quality assurance program in accordance KRS
15 304.17A-627[(8)] which shall be made available to the public upon request and shall include a
16 written plan which addresses:

- 17 (a) Scope and objectives;
18 (b) Program organization;
19 (c) Monitoring and oversight mechanisms; and
20 (d) Evaluation and organizational improvement of external review activities,
21 including:

1 1. Objectives and approaches used in the monitoring and evaluation
2 of external review activities, including the systematic evaluation of complaints for patterns and
3 trends;

4 2. The implementation of an action plan to improve or correct an
5 identified problem; and

6 3. The procedures to communicate the results of an action plan to its
7 employees and reviewers, as applicable;

8 (16) Submit a copy of any change to information provided on the Application for
9 Certification of an Independent Review Entity, HIPMC-IRE-1 (07/02), in writing to the
10 department for approval. A change shall not become effective until approved by the
11 commissioner;

12 (17) Submit a new application for certification if requested by the department
13 following notification of a material change in the application information as required by KRS
14 304.17A-627(2);

15 (18) Establish a fee structure, to be available upon request, for each type or level of
16 external review, including at a minimum, a fee for:

17 (a) A completed external review of:

18 1. A coverage denial, which requires resolution of a medical issue;
19 and

20 2. An adverse determination; and

21 (b) An incomplete external review;

22 (19) Immediately terminate an external review and provide written notification of the
23 termination to the insurer requesting the external review, as appropriate, and the department if:

1 (a) A conflict of interest or confidentiality issue is discovered at any time
2 during the external review process; or

3 (b) If a reversal of a coverage denial or adverse determination is received in
4 writing from the insurer;

5 (20) If more than one (1) reviewer is utilized in making a decision:

6 (a) Render an overall decision based upon the majority decision of the
7 reviewers; and

8 (b) If the reviewers are evenly split as to whether the recommended or
9 requested health care service or treatment should be covered, request an additional reviewer to
10 make a binding majority decision;

11 (21) Implement a written policy and procedure for each aspect of an external review
12 process, including:

13 (a) Processing of the request for assignment of an external review from an
14 insurer;

15 (b) Receipt and maintenance of medical records and information from insurer;

16 (c) Ensuring access to a sufficient number of appropriate qualified reviewers;

17 (d) Ensuring the credentialing, selection, and notification of a reviewer of
18 external review;

19 (e) Rendering a timely decision and issuance of notification of the decision;

20 (f) Ongoing monitoring and evaluation of the performance of a reviewer;

21 (g) Monitoring and oversight of a delegated external review function, if any;

22 (h) Billing for and collection of fees for external review, including filing fee
23 of covered person and cost of external review borne by the insurer;

- (i) Collecting and reporting data;
- (j) Receipt and consideration of new clinical information;
- (k) Termination of external review; and
- (l) Response to a request for information relating to a complaint filed with the department or by others; and

(22) Conduct a periodic formal program for training reviewers and provide a written record of the training to the department upon request.

Section 4. Application Process for Certification to Perform External Reviews.

(1) To perform an external review, an independent review entity shall be certified in accordance with requirements as established in KRS 304.17A-627 and this section.

(2) To be certified to perform an external review, an independent review entity shall:

(a) Complete and submit to the department the Application for Certification of an Independent Review Entity, HIPMC-IRE-1 (07/02);

(b) Submit a fee with the application for certification as required by Section 5 of this administrative regulation, made payable to the Kentucky State Treasurer; and

(c) Enclose with the application for certification, written documentation which supports compliance with the requirements of an independent review entity as established in KRS 304.17A-627 and Section 3 of this administrative regulation.

(3) An application for certification shall be submitted to the department at least ninety (90) days prior to expiration of the current certification.

Section 5. Fees.

(1) Department fees.

1 (a) An application for certification as an independent review entity shall be
2 accompanied by a fee in the amount of \$500.

3 (b) A submission of changes in information included in the application to the
4 department in accordance with KRS 304.17A-627(2), or any change in application information
5 after certification, shall be accompanied by a fee of fifty (50) dollars.

6 (2) Independent review entity fees.

7 (a) The total fee charged for an external review shall not exceed \$800 unless
8 justification for a higher fee is submitted to the department for approval prior to billing the
9 insurer in the case of unusual or complicated circumstances; and

10 (b) The twenty-five (25) dollar filing fee to be paid by the covered person
11 shall:

12 1. Be billed by the independent review entity upon assignment; or
13 2. Be waived if it creates a financial hardship in accordance with
14 KRS 304.17A-623(5). The independent review entity shall accept the following as evidence of
15 financial hardship:

16 a. Gross income of the covered person below 200 percent of
17 the federal poverty level based upon family size as shown by a federal income tax return for the
18 previous year; or

19 b. The covered person's participation in one (1) of the
20 following programs:

21 (i) National Prescription Drug Patient Assistance;

22 (ii) Kentucky Transitional Assistance;

23 (iii) Medicaid; or

1 (iv) Unemployment Insurance; or

2 3. Not be assessed if an external review is conducted following the
3 submission of new information in accordance with KRS 304.17A-623(6)(b).

4 Section 6. Department Review of Application for Certification or Change to Information
5 Provided on the Application.

6 (1) Upon receipt of an application for certification or a change to information
7 provided on the application, the department shall:

8 (a) Inform the applicant if supplemental information is or is not needed:

9 1. Applicant shall submit requested information within thirty (30)
10 days; or

11 2. If requested information is not provided to the department within
12 thirty (30) days, the department shall:

13 a. Deny the application for certification or the change to
14 information provided on the application; and

15 b. Not refund the applicable fee submitted in accordance with
16 Section 5(1) of this administrative regulation;

17 (b) Review the application and information required by KRS 304.17A-627
18 and Sections 2 through 11 of this administrative regulation;

19 (c) Make a determination whether a conflict of interest or an appearance of
20 impropriety exists; and

21 (d) Approve or deny certification, or the change to information provided on
22 the application, of an independent review entity within ninety (90) days.

(2) An independent review entity certificate shall expire on the second anniversary of the certification date unless it is renewed by submitting a new application for certification in accordance with Section 4(2) of this administrative regulation.

Section 7. Denial, Decertification, or Suspension Hearing Procedure. Upon the denial of certification, decertification, or suspension of a certification, the department shall give written notice of its action and advise the applicant or certificate holder that a request for a hearing may be filed in accordance with KRS 304.2-310.

Section 8. Independent Review Entity Complaint Process.

(1) A copy of the complaint filed pursuant to KRS 304.17A-625(16) and a letter from the department requesting a written response to the complaint shall be sent to the independent review entity.

(2) The independent review entity shall respond in writing to the complaint and submit to the department within ten (10) business days of receipt of the letter from the department the following:

(a) Any information relating to the complaint;

(b) Corrective actions to resolve the complaint, if any, including time frames for those actions; and

(c) A mechanism to evaluate the corrective action, if any.

(3) Upon receipt of the written response of the independent review entity, the department shall:

(a) Take action in accordance with KRS 304.17A-625(3); and

(b) Notify the complainant of action taken, if any.

1 Section 9. Department Investigations. The commissioner, may, upon his own action,
2 conduct investigations of an independent review entity pursuant to KRS 304.2-100.

3 Section 10. Reporting Requirements. An independent review entity shall, as a condition
4 of certification, submit to the department by March 31 of each year for the previous calendar
5 year, the [(4)] Data Reporting Requirements for Independent Review Entities, HIPMC-IRE-4
6 (7/00).[; and

7 ~~(2) — Annual Independent Review Entity Report Form, HIPMC IRE 5 (7/00).]~~

8 Section 11. Cessation of Operations to Perform External Review.

9 (1) Upon a decision to cease external review operations in Kentucky, an independent
10 review entity shall:

11 (a) Immediately notify the department in writing of its decision to cease
12 accepting new assignments; and

13 (b) Submit the following to the department thirty (30) ~~ninety (90)~~ days prior
14 to ceasing operations or as soon as practicable:

15 1. Written notification of the cessation of operations, including the
16 date of cessation and the number of pending external reviews with corresponding assignment
17 dates; and

18 2. A written action plan for ceasing operations, which shall be
19 approved by the department and include:

20 a. The projected date for rendering a decision for each
21 external review which has not been acted upon; and

22 b. The projected date of submission of the Data Reporting
23 Requirements for Independent Review Entity, HIPMC-IRE-4 (7/00).

(2) Upon receipt of a written notification as required in subsection (1) of this section, the department shall review and act upon the action plan of the independent review entity.

(3) Upon approval of an action plan to cease operations by the department, the independent review entity shall send written notification to insurers of the date of cessation.

(4) Annual reports required pursuant to Section 10(1) of this administrative regulation shall be submitted to the department by an independent review entity within thirty (30) days of ~~[prior to]~~ ceasing operations.

Section 12. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Certification of an Independent Review Entity, HIPMC-IRE-1 (07/02)";

(b) "Assignment of Independent Review Entity Form, HIPMC-IRE-2 ~~(07/04)~~~~[(07/02)]~~";

(c) "External Review Decision Notification Form, HIPMC-IRE-3 (10/02)";

(d) "Data Reporting Requirements for Independent Review Entities, HIPMC-IRE-4 (7/00)"; and

~~(e) ["Annual Independent Review Entity Report Form, HIPMC-IRE-5 (7/00)"; and~~

~~(f)]~~ "External Review Information Face Sheet, HIPMC-IRE-6 ~~(07/04)~~~~[(07/02)]~~".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office ~~[Department]~~ of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be

- 1 obtained on the department's Internet website at: <http://doi.ppr.ky.gov/kentucky>
- 2 [~~www.doi.state.ky.us~~].

READ AND APPROVED:

Glenn Jennings, Acting Executive Director
Kentucky Office of Insurance

Date

James Adams, Commissioner
Department of Public Protection

Date

LaJuana S. Wilcher, Secretary
Environmental and Public Protection Cabinet

Date

CONTACT PERSON:

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PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2004, at 9:00 a.m., (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 16, 2004, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Melea Kelch
Kentucky Office of Insurance
P. O. Box 517
Frankfort, KY 40602
PH: (502) 564-6032, ext. 4299
FAX: (502) 564-1456

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation 806 KAR 17:290, Independent External Review Program.

Contact Person: Melea Kelch

(1) Provide a brief summary of:

- (a) What this administrative regulation does: This administrative regulation establishes insurer requirements, procedures for the certification of independent review entities, and the process for initiating and conducting external review of utilization review decisions. It also establishes disclosure requirements of the external review process to be included in the health benefit plan issued at enrollment of a covered person.
- (b) The necessity of this administrative regulation: This is an amendment to an existing administrative regulation and is necessary to conform this regulation with 2004 Ky. Acts ch. 59, sec. 11. KRS 304.17A-629 requires the commissioner to promulgate administrative regulations regarding the independent external review program and to provide forms for external review.
- (c) How does this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.17A-629 requires the Commissioner to promulgate administrative regulations regarding independent external review program. This regulation is intended to do

that by making necessary amendments to this administrative regulation to conform with 2004 Ky. Acts ch. 59, sec 11.

- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes insurer requirements, procedures for the certification of independent review entities, and the process for initiating and conducting external review of utilization review decisions. It also establishes disclosure requirements of the external review process to be included in the health benefit plan issued at enrollment of a covered person.

- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

- (a) How the amendment will change this existing administrative regulation? This administrative regulation changes the existing regulation to conform with 2004 Ky. Acts ch. 59, sec. 11.
- (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with KRS 304.17A-629 and 2004 Ky. Acts ch. 59, sec. 11 and to correct citations to relevant statutes after the 2004 legislative session.
- (c) How the amendment conforms to the content of the authorizing statutes: The amendment is limited to including changes from the 2004 legislative session specifically as a result of 2004 Ky. Acts ch. 59, sec. 11.
- (d) How the amendment will assist in the effective administration of the statutes: The amendment will alter the regulation to comply with 2004 Ky. Acts ch. 59, sec. 11.

- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will effect consumers, insurers offering a health benefit plan in Kentucky, and the procedures to be followed by an independent review entity.
- (4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This is an amendment to an existing administrative regulation and is required to conform the administrative regulation to the changes in statute during the 2004 session.
- (5) Provide an estimate of how much it will cost to implement this regulation:
- (a) Initially: The cost will be minimal.
 - (b) On a continuing basis. There should be no additional cost on a continuing basis.
- (6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? The budget of the Kentucky Office of Insurance.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. There will be no increase in fees or funding necessary to implement this administrative regulation.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any new fees or directly or indirectly increase any fees.
- (9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all health insurers offering health benefit plans in Kentucky.

DETAILED SUMMARY OF INCORPORATED MATERIAL

806 KAR 17:290

Independent External Review Program

(1) 806 KAR 17:290 incorporates by reference the following material:

(a) HIPMC-IRE-1 (07/02), “Application for Certification of an Independent Review Entity” To be certified to perform an external review, an independent review entity shall make application to the department using this form.

(b) HIPMC-IRE-2 (07/04) [~~(07/02)~~], “Assignment of Independent Review Entity Form” Upon an insurer’s assignment of an independent review entity to conduct an external review, the insurer shall complete and send to the department this form. This form was changed to clarify issues that have been problematic in the past.

(c) HIPMIC-IRE-3 (10/02), “External Review Decision Notification Form”. An independent review entity shall notify the department that it has reached an external review decision using this form.

(d) HIPMC-IRE-4 (7/00), “Data Reporting Requirements for Independent Review Entities” An Independent review entity shall use this form to report to the department information about external review decisions.

(e) [~~“Annual Independent Review Entity Report Form, HIPMC IRE 5 (7/00)”~~]. This form was eliminated to comply with repeal of this report in HB 650.

(f) HIPMC-IRE-6 (07/04) [~~(07/02)~~], “External Review Information Face Sheet” An insurer or private review agent shall complete and forward this form, along with other relevant information, to the independent review entity. This form was changed to clarify issues that have been problematic in the past.

(2) The total number of pages that the Office of Insurance has incorporated by reference is twenty-four (24)